HIGH COURT OF UTTARANCHAL AT NAINITAL

(Chapter VIII Rule 32 (2) (b)
Description of the Case

Writ Petition (Criminal Side) No. 172 of 2006

Date of Decision: 1st March, 2006

~~A.F.R. (Approved for reporting)~~

Not approved for reporting.

Date initial of Judge.

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition(Criminal Side) No. 172 of 2006

Genda Singh
S/O Shri Laxman Singh
R/o Village Karsawar
District- Lakhimpur Khiri
At present at Shergarh,
Police Station- Doiwala
District –Dehradun

… Petitioner

Versus

1. State of Uttaranchal

2. Tarsem Singh
S/O Shir Gokal Chand
R/O Village Shergarh,
Police Station –Doiwala
District-Dehradun

… Respondent

Sri Ramji Srivastava, learned counsel for the petitioner.
Sri A.Rab, Additional G.A. for the State.

Hon'ble J.C.S.Rawat, J

The present writ petition has been filed to set aside the judgment and orders dated 29.10.2005 and 29.06.2005 (Annexure Nos. 8 and 7 to the writ petition) passed by the Sessions Judge, Dehradun and Sub Divisional Magistrate Rishikesh, District- Dehradun respectively.

It was further prayed by this petition that S.D.M., Rishikesh be directed to pass an order for handing over the possession of property/land in dispute of the petitioner.

Brief facts for the disposal of this petition are that S.H.O., Doiwala submitted a police report u/s 145 Cr. P.C. before the competent Executie Magistrate, Rishikesh and he has stated that there is as dispute regarding the possession over the disputed property and there is also an apprehension of breach disputed property and there is also an apprehension of breach of peace between the parties. The Magistrate on 07.07.1998 passed the preliminary order and initiated the proceedings u/s 145 Cr. P.C. Thereafter, the learned Magistrate attached the

property u/s 146 (2). The learned Magistrate passed the final judgment and order in this case and dropped the proceedings u/s 145 Cr.P.C. and directed the parties to decide their claims of ownership from competent civil court. It was further directed that till than the handing over of the property in dispute will be as it was.

Feeling aggrieved by the said order, the respondent No. 2 preferred Revision Petition before the Sessions Judge, Dehradun and the Sessions Judge vide its order dated 29.10.1999 set aside the judgment and order and remanded the case back to the learned Magistrate to decide it afresh. The learned Magistrate after hearing the parties decided the matter on 29.06.2005 wherein it was held that since the respondent No. 2 was in possession of the property at the time of attachment of the property in dispute, therefore, the property in dispute was released in favour of to the respondent No. 2. He has further directed the S.H.O., Doiwala to hand over the possession of the said property to respondent No. 2. Feeling aggrieved by the said order, the petitioner preferred a revision petition before the Sessions Judge and the Sessions Judge vide its order dated 29.10.2005 dismissed the revision and hence this writ petition.

I have heard learned counsel for the parties and perused the record.

It was contended by the learned counsel for the petitioner that the preliminary order was passed on 07.07.1998 and the petitioner had been dispossessed prior two months from the dated of preliminary order. He has also relied upon the provision of 145 (4) of Cr.P.C. It was further contended that the property should not be return back as the dis-possession of the respondent No. 2 had taken place prior two months of the preliminary order.

I have gone through the entire record. The learned Magistrate has relied upon the report of the police. It is

indicated in the report which is dated 07.06.1998 and in that report it is clear averment that the respondent No. 2 is residing in the said property. The learned Magistrate had also relied upon the said averment and he has held that the court has to see who was in possession over the disputed property two months prior to the date of preliminary order. The preliminary order was passed by the S.D.M on 07.07.1999. Thus, there the respondent No. 2 was residing in the disputed house on 07.06.1998 when the challani report was sent. The learned Magistrate was justified in holding that the respondent No. 2 was in possession of the disputed property within two months priors to the preliminary order. It is also settled principle of law that the Executive Magistrate while exercising jurisdiction u/s 145 had not to see title of the property. He has only to see the possession on the date of the preliminary order or two months prior to that order. He may be trespasser even than he was in possession of the land, the Executive Magistrate had to restore the possession to the person concerned. I do not find any merit in the contention of the learned counsel for the petitioner.

The learned counsel for the petitioner further contended that the suit has been filed before the Civil Court and the matter is pending before the competent court of law. Mere pendency of the civil suit does not prevent the S.D.M. not to proceed with the case. Learned Executive Magistrate was fully competent to proceed u/s 145 Cr.P.C. and to decide who was in possession over the land in dispute on the date of the preliminary order or two months prior to the date of the preliminary order. the learned Magistrate was well within his jurisdiction.

As such, I do not find any merit in the contention advanced by the learned counsel for the petitioner. I am completely in agreement with the findings of both the courts below. The petition devoids of merit and is liable to be dismissed and is dismissed accordingly.

(J.C.S. Rawat, J.)

1st March, 2006
Shiv